

tax purposes of certain deductions unless the right to take such deductions for estate tax purposes is waived.

(f) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28719, Dec. 29, 1972; T.D. 9468, 74 FR 53657, Oct. 20, 2009; T.D. 9468, 74 FR 61525, Nov. 25, 2009]

§ 20.2053-2 Deduction for funeral expenses.

Such amounts for funeral expenses are allowed as deductions from a decedent's gross estate as (a) are actually expended, (b) would be properly allowable out of property subject to claims under the laws of the local jurisdiction, and (c) satisfy the requirements of paragraph (c) of § 20.2053-1. A reasonable expenditure for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, including a reasonable expenditure for its future care, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

§ 20.2053-3 Deduction for expenses of administering estate.

(a) *In general.* The amounts deductible from a decedent's gross estate as "administration expenses" of the first category (see paragraphs (a) and (c) of § 20.2053-1) are limited to such expenses as are actually and necessarily, incurred in the administration of the decedent's estate; that is, in the collection of assets, payment of debts, and distribution of property to the persons entitled to it. The expenses contemplated in the law are such only as attend the settlement of an estate and the transfer of the property of the estate to individual beneficiaries or to a trustee, whether the trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; and (3) miscellaneous

expenses. Each of these classes is considered separately in paragraphs (b) through (d) of this section.

(b) *Executor's commissions* (1) Executors' commissions are deductible to the extent permitted by § 20.2053-1 and this section, but no deduction may be taken if no commissions are to be paid. In addition, the amount of the commissions claimed as a deduction must be in accordance with the usually accepted standards and practice of allowing such an amount in estates of similar size and character in the jurisdiction in which the estate is being administered, or any deviation from the usually accepted standards or range of amounts (permissible under applicable local law) must be justified to the satisfaction of the Commissioner.

(2) A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the terms of the will set forth the compensation payable to the executor for services to be rendered in the administration of the estate, a deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice and to the extent permitted by § 20.2053-1.

(3) Except to the extent that a trustee is in fact performing services with respect to property subject to claims which would normally be performed by an executor, amounts paid as trustees' commissions do not constitute expenses of administration under the first category, and are only deductible as expenses of the second category to the extent provided in § 20.2053-8.

(c) *Attorney's fees*—(1) Attorney's fees are deductible to the extent permitted by § 20.2053-1 and this section. Further, the amount of the fees claimed as a deduction may not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate, the law and practice in the jurisdiction in which the estate is being administered, and the skill and expertise of the attorneys.

(2) A deduction for attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund should be claimed at the time the deficiency is contested or the refund claim is prosecuted. A deduction for